

The publication listed in the letter qualifies as a magazine and is excluded from Retailers' Occupation Tax and Service Occupation Tax liability. See the enclosed copy of 86 Ill. Adm. Code 130.2105 and 140.125. (This is a PLR).

March 29, 1999

Dear Xxxxx

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your representative's letters of December 31, 1998 and February 2, 1999. Review of your representative's request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your representative's request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

Your representative's letter stated and made inquiry as follows:

This is a formal private letter ruling request made on behalf of COMPANY, under 2 Ill. Admin. Code ch. 1, sec. 1200.110. To the best of COMPANY's knowledge, the letter ruling requested herein is not (nor has it been) the subject of an audit, administrative or court case involving COMPANY or any related party.

COMPANY is in the business of brokering printing services. COMPANY arranges for the printing and the mailing of publications on behalf of its customer who typically is the publisher. One of COMPANY's customers publishes a bi-monthly financial newsletter entitled *NAME*, a copy of which is attached to this letter. The publisher is located outside Illinois. *NAME* is printed in Illinois and mailed, with second class postage, to its subscribers from a mailing house located in Illinois. COMPANY hires and pays both the printer and the mailing house.

COMPANY's publisher/customer does not provide COMPANY with a resale certificate and COMPANY does not provide the Illinois printer with a resale certificate.

COMPANY has been informed that its printer, located in CITY, Illinois, has been paying a 6.75% Illinois Occupation Tax on its cost of materials. That tax has been billed to COMPANY by the printer.

We request private letter rulings on the following issues: (1) the newsletter is exempt from Illinois occupation and use taxation because it qualifies as a magazine; (2) in the future, the Illinois printer may purchase the paper and ink which go into the newsletter for resale and need not remit Service Occupation Tax on its gross receipts from its sale

of the newsletters to COMPANY nor collect Service Use Tax from COMPANY; (3) the printer may obtain a refund of the Service Occupation Tax paid in the past, whether to its supplier or directly to the Department, so long as it undertakes steps to assume the burden of the tax. We believe that the rulings should be issued for the following reasons:

- (1) The newsletter is exempt from Illinois occupation and use taxation because it qualifies as a magazine.

The sale of *NAME*, as exemplified in the attached sample, is not subject to the Service Occupation Tax pursuant to 86 Illinois Administrative Code Sections 130.2105(a)(2) and 140.125(l), which exempt the sale of newspapers and magazines. In Moody's Investor Service, Inc. v. Department of Revenue, 101 Ill. 2d 291 (1984), the Illinois Supreme Court concluded that the sale of several financial publications published by Moody's Investors Service, Inc., was exempt from Illinois sales tax. The court noted that the Department could not 'explain why Moody's announcement that a city's bond rating has dropped is not news, yet becomes news when published the next day by the Wall Street Journal.' Id. at 301. The court also pointed out that Moody's publications qualified for second-class postage in the U.S. Postal system, a category reserved for news magazines and similar publications. Consequently, the publications were newsworthy and exempt from tax.

Like the publications involved in Moody's Investor Service, *NAME* is a newsletter that contains financial news, including articles on the fiscal health of Japan and the best stocks to purchase, information that might be published in a variety of financial news magazines. *NAME* is mailed to its subscribers with second class postage, the news magazine category. As a result, under the case law, *NAME* is an exempt news publication.

- (2) In the future, the Illinois printer may purchase the paper and ink that go into the newsletter for resale and need not remit Service Occupation Tax on its gross receipts from its sale of the newsletters to COMPANY nor collect Service Use Tax from COMPANY.

For purposes of this request, we request that the Department assume that the Illinois printer is a registered de minimis serviceman. Inasmuch as the printer has heretofore been paying a 6.75% rate on its cost of materials and collecting Service Use Tax from COMPANY, this is a reasonable assumption.

Because the sale of the newsletter is exempt from Service Occupation Tax, the printer would have no need to remit such tax on its gross receipts from the sale of the printed materials to COMPANY.

- (3) The printer may obtain a refund of the Service Occupation Tax paid in the past, whether to its supplier or directly to the Department, so long as it undertakes steps to assume the burden of the tax.

The printer did not give a resale certificate to its supplier and either paid SOT on its cost of the materials used in printing the newsletter to the supplier or self-assessed SOT and remitted tax directly to the Department. It reimbursed itself by collecting Service Use Tax from COMPANY.

It is our understanding that the Department will allow a purchaser who was registered at the time of a transaction and thus could have given a resale certificate at that time to claim a resale exemption after the conclusion of the transaction by giving the seller a proper resale exemption certificate. Thus, the printer could retroactively give a resale certificate to its supplier who could then proceed to seek a refund for periods that remain open under the statute of limitations. Alternatively, if the printer has remitted SOT directly to the Department, the printer may obtain a refund of that tax for the periods that remain open under the statute of limitations. Since the material was converted into an exempt newsletter, the printer would be entitled to a refund of the SOT paid. In either situation, the printer would have to unconditionally refund the Service Use Tax collected from COMPANY in order to obtain the refund.

We respectfully request a letter ruling confirming these conclusions.

We believe that the publication entitled "*NAME*" qualifies as a magazine and its sale is exempt from Retailers' Occupation Tax and Service Occupation Tax liability. See the enclosed copies of 86 Ill. Adm. Code 130.2105 and 140.125; and Moody's Investors Service, Inc. v. The Department of Revenue, 101 Ill. 2d 291 (1984).

The Department cannot provide you with a binding ruling on the questions presented in your letter regarding whether the Illinois printer is subject to Service Occupation Tax liability or whether the printer can obtain a refund or credit for tax that the printer has paid. The Department will not issue Private Letter Rulings to taxpayer representatives for anonymous or unidentified taxpayers. See the enclosed copy of 86 Ill. Adm. Code 1200.110(a)(1).

We can provide you with an answer as to what tax liability COMPANY will incur when dealing with an Illinois printer in the situation presented in your letter. Regardless of whether the Illinois printer is registered, registered de minimis, or unregistered, COMPANY will incur no Service Use Tax liability on the purchase of printing materials when the item being printed qualifies as a magazine. The Newsprint and Ink exclusion provides the basis for this result. See the enclosed copies of 86 Ill. Adm. Code 130.2105 and 140.125.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Bill Lundeen  
Chief Counsel

BL:TDC:msk  
Enc.